

**MINUTES**

**NATIVE AMERICAN GRAVES PROTECTION AND  
REPATRIATION REVIEW COMMITTEE**

**THIRTY-FIRST MEETING  
TELECONFERENCE**

**MARCH 3, 2006  
2:00 P.M. E.D.S.T.**

Remote Locations (National Park Service offices):

Headquarters Office  
1201 Eye Street NW  
Washington, DC

Northeast Regional Office  
15 State Street  
Boston, MA

Southeast Regional Office  
100 Alabama Street, SW  
Atlanta, GA

Midwest Regional Office  
601 Riverfront Drive  
Omaha, NE

Mississippi National River and Recreation Area  
111 East Kellogg Blvd  
St. Paul, MN

Intermountain Regional Office  
12795 West Alameda Parkway  
Denver, CO

Intermountain Regional Office  
2968 Rodeo Park Drive West  
Santa Fe, NM

Western Archeological and Conservation Center  
255 North Commerce Park Loop  
Tucson, AZ

Pacific West Regional Office  
111 Jackson Street  
Oakland, CA

Pacific West Regional Office  
909 First Avenue  
Seattle, WA

Alaska Regional Office  
Federal Building  
222 W. 7<sup>th</sup> Avenue  
Anchorage, AK

Pacific Island Support Office  
300 Ala Moana Boulevard  
Honolulu, HI

## **TABLE OF CONTENTS**

<b>Background</b>	<b>5</b>
<b>The 31st Meeting of the Review Committee</b>	<b>6</b>
<b>Introduction</b>	<b>8</b>
<b>Certification of Minutes of November 16-17, 2005</b>	<b>8</b>
<b>National NAGPRA Program Update</b>	<b>8</b>
<b>Request for Recommendation Regarding Disposition of Culturally Unidentifiable Human Remains from Colorado</b>	<b>9</b>
<b>Request for Recommendation Regarding Disposition of Culturally Unidentifiable Human Remains from California</b>	<b>11</b>
<b>Consideration of the Review Committee's Meeting Procedures</b>	<b>12</b>
<b>FACA Compliance</b>	<b>13</b>
<b>Discussion of Upcoming Review Committee Meetings</b>	<b>13</b>
<b>Review Committee Membership</b>	<b>14</b>
<b>Public Comment</b>	<b>14</b>
<b>Meeting Adjournment</b>	<b>15</b>

## **Background**

The Native American Graves Protection and Repatriation Review Committee was established under the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001 et seq., which was signed into law by President George Bush on November 16, 1990.

Per the Review Committee's charter –

“The duties of the Committee are solely advisory. Specifically, the Committee will be responsible for:

1. Monitoring and reviewing the implementation of the inventory and identification processes and repatriation activities required under sections 5, 6, and 7 of Public Law 101-601 to ensure a fair and objective consideration and assessment of all available relevant information and evidence;
2. Reviewing and making findings relating to the identity or cultural affiliation of human remains, funerary objects, sacred objects, and objects of cultural patrimony, or the repatriation of such items, upon the request of any affected party;
3. Facilitating the resolution of any disputes among Indian tribes, Native Hawaiian organizations, or lineal descendants, and Federal agencies or museums relating to the repatriation of human remains, funerary objects, sacred objects, and objects of cultural patrimony, including convening the parties to the dispute, if deemed desirable;
4. Compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum and recommending specific actions for disposition of such remains;
5. Consulting with Indian tribes, Native Hawaiian organizations, and museums on matters pertaining to the work of the Committee affecting such tribes or organizations;
6. Consulting with the Secretary [of the Interior] in the development of regulations to carry out Public Law 101-601;
7. Performing such other related functions as the Secretary [of the Interior] may assign to the Committee;
8. Making recommendations, if appropriate, regarding future care of human remains, funerary objects, sacred objects, and objects of cultural patrimony which are to be repatriated; and
9. Submitting an annual report to Congress on the progress and any barriers encountered in carrying out the Committee responsibilities during the year.”

The Review Committee is organized and administered according to the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix (1994).

Per NAGPRA, Review Committee members are appointed by the Secretary of the Interior from nominations by Indian tribes, Native Hawaiian organizations, traditional Native American religious leaders, national museum organizations, and scientific organizations.

The Review Committee reports to the Secretary of the Interior. Under the Review Committee's current charter, the Manager, National NAGPRA Program, National Park Service or, in her absence, a designee serves as the Designated Federal Officer (DFO), who oversees the activities of the Review Committee and with whom the National Park Service provides administrative and staff support to the Review Committee on behalf of the Secretary of the Interior.

Additional information about the Review Committee – including the Review Committee's charter, membership, meeting protocol, and dispute procedures – is available at the National NAGPRA Website, <http://www.cr.nps.gov/nagpra/> (click on “Review Committee”).

Notice of this Review Committee meeting was published in the Federal Register on February 2, 2006 (Vol. 71, No. 22, page 5681-5682).

## **The 31st Meeting of the Review Committee**

The 31st meeting of the Native American Graves Protection and Repatriation Review Committee was called to order by Ms. Rosita Worl at 2:00 p.m. e.d.s.t, Friday, March 3, 2006. The meeting was a teleconference with public access locations available in 12 cities (see Minutes, page 1-2).

Review Committee members in attendance –

Ms. Rosita Worl, Chair  
Mr. Garrick Bailey  
Mr. Colin Kippen  
Mr. Dan Monroe  
Mr. Vincas Steponaitis

Designated Federal Officer in attendance –

Mr. Timothy McKeown, Program Officer, National NAGPRA Program, National Park Service

National Park Service/Department of the Interior staff in attendance –

Ms. Sherry Hutt, Program Manager, National NAGPRA Program, National Park Service  
Ms. Cynthia Murdock, Program Officer, National NAGPRA Program, National Park Service  
Ms. Robin Coates, Secretary, National NAGPRA Program, National Park Service  
Ms. Jaime Lavallee, Contractor, National NAGPRA Program, National Park Service  
Mr. David Tarler, Contractor, National NAGPRA Program, National Park Service  
Ms. Lesa Hagel, Contractor, National NAGPRA Program, National Park Service  
Ms. Sarah Husain, Intern, National NAGPRA Program, National Park Service  
Ms. Carla Mattix, Office of the Solicitor, Department of the Interior  
Mr. Toby Halvarson, Office of the Solicitor, Department of the Interior  
Ms. Anna Roe, Office of the Solicitor, Department of the Interior

Persons in attendance during part or all of the meeting at the following remote locations (names and affiliations as provided at the meeting by attendees) –

### **Washington, DC**

Ms. Martha Graham, Archeology Program, National Park Service  
Ms. Carolyn Kinsey, Archeology Program, National Park Service  
Ms. Risa Arbolino, National Museum of Natural History, Smithsonian Institution  
Mr. R. Eric Hollinger, National Museum of Natural History, Smithsonian Institution  
Ms. Dorothy Leppert, National Museum of Natural History, Smithsonian Institution  
Ms. D. Bambi Kraus, National Association of Tribal Historic Preservation Officers  
Mr. David Lindsay, Society for American Archaeology  
Mr. Russell Leighty, American Museum of Natural History, NY  
Ms. Helen Robbins, Field Museum, Chicago, IL  
Ms. Lauren Sieg, Springfield, VA

### **Boston, MA**

Mr. Chuck Smythe, National Park Service  
Mr. Neil Trubowitz, National Park Service  
Ms. Diana Loren, Peabody Museum of Archaeology and Ethnology  
Ms. Sandie Dong, Peabody Museum of Archaeology and Ethnology  
Ms. Trish Capone, Peabody Museum of Archaeology and Ethnology  
Ms. Christina Hodge, Peabody Museum of Archaeology and Ethnology

### **Atlanta, GA**

Mr. J. Anthony Paredes, National Park Service  
Mr. Tommy Jones, National Park Service

Omaha, NE

Ms. Michelle Watson, National Park Service

St. Paul, MN

Mr. Michael J. Evans, National Park Service

Denver, CO

Mr. Dave Ruppert, National Park Service  
Ms. Christine Landrum, National Park Service  
Ms. Mary Carroll, National Park Service  
Ms. Vivian Amundson, National Park Service

Santa Fe, NM

Mr. Ed Lee Natay, National Park Service

Tucson, AZ

Ms. Barbara Herman Reese, National Park Service  
Mr. John Madsen, Arizona State Museum  
Mr. John McClellan, Arizona State Museum  
Ms. Alice Sadongei, Arizona State Museum  
Mr. Alan Ferg, Arizona State Museum

Oakland, CA

Mr. Mark Rudo, National Park Service  
Mr. Norman McAdams, Alameda County Sheriff's Office  
Mr. Larri Fredericks, Hearst Museum  
Mr. Anthony Garcia, Hearst Museum  
Ms. Jennifer DeAngelo, CALTRANS  
Mr. Stephen Bryne, CALTRANS  
Mr. Brett Rushing, CALTRANS  
Mr. Jeff Fentress, San Francisco State University  
Mr. Edward Luby, San Francisco State University  
Mr. Pat Schlesinger, Office of Research, University of California

Seattle, WA

Mr. Fred York, National Park Service  
Ms. Angela Neller, Wanapum Heritage Center

Anchorage, AK

Ms. Eileen Divinney, National Park Service  
Ms. Janet Cohen, National Park Service

Honolulu, HI

Ms. Melia Lane-Kamahele, National Park Service  
Mr. Lance Foster, Office of Hawaiian Affairs  
Ms. Malia Baron, Bishop Museum  
Ms. Jodi Yamamoto, Bishop Museum

Additional Participants

Mr. Leigh Kuwanwisiwma, Hopi Tribe, Kykotsmobi, AZ  
Mr. Larry Wiese, Mesa Verde National Park, CO  
Ms. Donna Reed, Mesa Verde National Park, CO  
Ms. Linda Towle, Mesa Verde National Park, CO  
Mr. Rob Wood, Sacramento, CA  
Ms. Debbie Treadway, Sacramento, CA

## **Introduction**

Mr. McKeown called the role of members and confirmed that the Review Committee had quorum for the meeting. Ms. Worl called the meeting to order. Mr. Kuwanwisiwma offered an invocation.

## **Certification of Minutes of November 16-17, 2005**

Mr. Monroe made a motion to adopt the minutes of the November 16-17, 2005 Review Committee meeting. Mr. Steponaitis seconded the motion. The motion passed by unanimous vote. The Review Committee adopted the minutes of the November 16-17, 2005 Review Committee meeting.

## **National NAGPRA Program Update**

Ms. Hutt summarized the activities of the National NAGPRA Program since the Albuquerque, NM meeting in November 2005.

Review Committee: The solicitation for new member to the Review Committee was published in the Federal Register on February 1, 2006. Mr. McKeown attended Federal Advisory Committee Act (FACA) training in Phoenix, AZ. The National NAGPRA staff has worked hard to streamline the Review Committee members' travel and compensation process.

Regulations: The final rule on 43 CFR 10.13, Future applicability, and the proposed rule on 43 CFR 10.11, Disposition of culturally unidentifiable human remains, are under review at the Department. Work on 43 CFR 10.7, Disposition of unclaimed human remains, funerary objects, sacred objects, or objects of cultural patrimony, is ongoing.

Grants: March 1, 2006 was the deadline for the current grant cycle, with grants arriving at such a pace as to indicate an increase of grant applications over last year. Applicants were interviewed and an offer will be made for NAGPRA grants coordinator, an FTE position. In response to discussions at the Albuquerque meeting, an intern from the NPS Diversity Program will work with the National NAGPRA Program in the summer of 2006 on a study of areas served by grants historically to determine underserved areas. Some of that work is already in progress.

Notices: Work on notices continues at a steady pace, with 39 notices published and 9 notices awaiting publication. Notices are arriving at the National NAGPRA Program office at a rate almost double the previous year, which indicates a lot of work is being done to complete notices and fully comply with the law. Currently, 185 notices are pending publication, compared to 300 at the same time last year. Taking into account new notices, this indicates a concerted effort toward publishing the long pending notices.

Database: Ms. Murdock recently completed a new database, Published Notices by State, which lists cultural affiliation determinations by state. This will allow correlation between the Culturally Unidentifiable (CUI) database and the Published Notices by State database to help people complete research toward further identification of those on the CUI list. The database is located at [www.cr.nps.gov/nagpra/NOTICES/index.htm](http://www.cr.nps.gov/nagpra/NOTICES/index.htm). Currently, Ms. Husain is working on a database of treaty maps, which will aid in consultation determinations, as well as affiliation and disposition decisions. Another project currently in process, in cooperation with NATHPO and the American University Washington College of Law, is a state burial law project, which will allow a comparison of attributes between Federal law and state law.

Civil Enforcement: Mr. Tarler, enforcement coordinator, is working with law enforcement to finalize the first completed civil penalty case, which will be presented to the Assistant Secretary for review probably within the next week. Several other cases are in the active investigation stage. Some cases will be closed and the museums notified, and cases that are ongoing will again receive ongoing attention. The National NAGPRA Website has guidance and forms for making allegations of failure to comply with the requirements of NAGPRA and bringing a civil penalty complaint.

Training: Program-sponsored training will be held on March 16, 2006 in Norman, OK, and May 29, 2006 in Juneau, AK. National Preservation Institute-sponsored training will be held May 16-18, 2006 in Sacramento, CA and September 26-28, 2006 in Santa Fe, NM. Ms. Hutt stated she would include a list of completed trainings in the National NAGPRA Midyear Report.

Review Committee Discussion: Ms. Worl thanked Ms. Hutt for the report, and stated that the National NAGPRA Program has been productive since the last meeting. Mr. Bailey stated he has seen eBay listings for items that could have come from burial sites, such as Prehistoric southwestern pots and eastern pottery. Ms. Hutt stated that just prior to the teleconference, the NAGPRA staff gave training to the FBI art crimes team. Ms. Hutt stated Mr. Bailey can refer any related concerns to Mr. Tarler, who will in turn refer the concerns to the appropriate people at the FBI. Ms. Hutt stated that Mr. Bailey's vigilance was appreciated. Mr. Steponaitis commended the National NAGPRA staff on their hard work and expressed his appreciation. Mr. Steponaitis stated he was glad to see all of the training that is being done and added that he took the training in Albuquerque and found it very valuable. Mr. Steponaitis wanted to reiterate a point he made in Albuquerque that cultural affiliation is a key issue and it depends on looking at evidence, which is an issue that kind of got short shrift during the training he attended. Mr. Steponaitis stated that the staff works hard to make the courses good, but he wanted to offer that feedback.

### **Request for Recommendation Regarding Disposition of Culturally Unidentifiable Human Remains from Colorado**

Mr. Larry Wiese, superintendent of Mesa Verde National Park, thanked the Review Committee for the opportunity to present remarks concerning repatriation of 25 culturally unidentified human remains and 50 undiagnostic associated funerary objects. Mr. Wiese stated that also present on the teleconference were Mr. Leigh Kuwanwisiwma, director of the Hopi Cultural Preservation Office, Ms. Linda Towle, chief of research and resource management at Mesa Verde National Park, and Ms. Donna Reed, museum technician at Mesa Verde National Park.

On April 20, 2006, Mesa Verde National Park will assist the Hopi Tribe with reburial of Native American human remains and associated funerary objects for which a Notice of Inventory Completion was published in August 1999. The Native American human remains and associated funerary objects were repatriated in December 2005 to the Pueblo of Acoma, the Pueblo of Zia, the Zuni Tribe, and the Hopi Tribe. The Hopi Tribe was asked by the repatriating Indian tribes to take the lead in the reburial process. The culturally unidentified human remains and undiagnostic funerary objects were not included in the 1999 notice as it was unclear at the time how culturally unidentified remains would be handled under NAGPRA. Over the course of several years of consultation, the Indian tribes have consistently requested reburial of the culturally unidentified human remains. Mr. Wiese stated that Mesa Verde National Park agrees with the request. The culturally unidentified human remains and associated funerary objects were acquired from a variety of sources, and although there is not conclusive evidence to affiliate the human remains and objects with the affiliated Indian tribes, Mr. Wiese stated that Mesa Verde National Park believes that the context supports a reasonable inference of a relationship of shared group identity with the affiliated Indian tribes. Mesa Verde National Park is asking the Review Committee to recommend repatriation of the culturally unidentified human remains to the affiliated Indian tribes following publication of a Notice of Inventory Completion.

Mr. Leigh Kuwanwisiwma stated he agreed with Mr. Wiese's presentation, as does the 20-plus Indian tribe consortium that has been meeting on this issue. Through consensus, all of the Indian tribes that have been working with Mesa Verde National Park seriously recommend to the Review Committee the need to respectfully reinter the culturally unidentified human remains and funerary objects. The Indian tribes and Mesa Verde National Park have gone through the process of working out the details to proceed with the reburial on April 20, 2006, and feel that the culturally unidentified human remains and funerary objects should be included.

Review Committee Questions: Mr. Bailey stated that the first entry in the inventory was noted as originating from the Navajo Reservation west of Shiprock and asked why the item wasn't directly repatriated to the Navajo. Mr. Wiese stated that they have very little information on the legal record or origin of the items. If needed, the items could be repatriated to the Navajo, who would turn the items over to the Hopi Tribe for reburial at Mesa Verde National Park. Mr. Bailey stated some human remains in the inventory were listed as possibly Historic and that there really was no way to determine whether they were Historic. Mr. Wiese stated Mr. Bailey was correct and

thanked him for the point. Mr. Bailey asked if the Southern Ute and the Ute Mountain Ute were included in the consultation as groups who historically occupied the area. Mr. Wiese stated that the Southern Ute and the Ute Mountain Ute participated in the consultation described by Mr. Kuwanwisiwma and were very supportive of this repatriation request.

Mr. Kippen asked Mr. Wiese and Mr. Kuwanwisiwma how the Indian tribes communicated their concurrence to this repatriation and what assurances could be given to the Review Committee that all appropriate groups were notified and given a chance to respond. Mr. Wiese stated that during the consultation meetings, cultural affiliation was discussed quite a bit and Mesa Verde National Park presented documentation asking for responses. Mr. Wiese stated Mesa Verde National Park sent meeting announcements which included data, and then at the executive session followed up on the information and asked for concurrence on the next step. The Indian tribes continued to request the reburial of both the culturally identifiable and culturally unidentifiable human remains since 1993, so this is not a new issue. Mesa Verde National Park has met with the four repatriating Indian tribes several times to discuss this issue, with additional contact by telephone, and the Indian tribes' request was to move forward. Mr. Kuwanwisiwma stated that the issue of how to best deal with culturally unidentifiable human remains is long-standing, and efforts concerning this issue are well-documented. The consulting tribes have continually wanted to deal with the culturally unidentifiable human remains in a manner that represents the ethics and moral responsibilities of all of the Indian tribes. More recently the four repatriating Indian tribes again fought to have the NPS seriously consider the culturally unidentifiable human remains in their reburial process. Mr. Kuwanwisiwma assured the Review Committee that they have done a lot of homework concerning this issue and the Indian tribes are together on the decision to include the culturally unidentifiable human remains.

Mr. Steponaitis asked the nature and extent of the forensic examination that was done of the human remains in question. Ms. Towle stated that in 1995 while preparing their inventory Mesa Verde National Park contracted with a physical anthropologist from Amherst, MA, to conduct a physical anthropological review of all human remains in their collection. That was completed using a standard collection sheet for measurements and notation of other anomalies, and a report was available on the methodology used for the review. No photography was done. In response to a question by Mr. Steponaitis, Ms. Towle confirmed that the information would be available if people needed further information for future identification purposes. Mr. Steponaitis asked why some inventory entries included associated funerary objects but also indicated no provenience information was available. Ms. Towle stated that in several cases, the human remains and associated objects came to the museum in a box, in some cases from anonymous donors. In those cases, it was assumed that the artifacts were associated with the human remains.

Review Committee Discussion: Mr. Monroe congratulated the involved parties on their hard work and recommended repatriation of the culturally unidentifiable human remains and associated funerary objects. Mr. Halvarson stated that a question came up as to whether the BIA had to concur with Mesa Verde National Park's determination listing the human remains found on the Navajo Reservation as culturally unidentifiable. Mr. Halvarson stated that he would bring the issue to the BIA and try to get a determination in a timely fashion that does not interfere with the scheduled reburial.

Ms. Worl asked to what extent the Navajo Nation was included in the consultation process and whether they concurred with the request. Mr. Wiese stated that the Navajo Nation was in the group of 20-plus Indian tribes that attended all group and individual consultation meetings and concurred with the decision to move forward with the reburial. Mr. Wiese stated that there was evidence of the Navajo Nation's concurrence. Mr. Kuwanwisiwma stated that the human remain was found on the Navajo Reservation but was culturally unidentifiable. Based on discussions with Mr. Tim Begay from the Navajo Historic Preservation Office, Mr. Kuwanwisiwma stated that the Navajo Nation felt the culturally unidentifiable human remain found on the Navajo Reservation should be included in this request. Mr. Kuwanwisiwma noted that the Navajo Nation's current repatriation policy prevented them from actually doing reburials on the Navajo Reservation, and the Navajo Nation would most likely defer to others to deal with reburials. Mr. McKeown stated he wanted to make clear that the issue raised by Mr. Halvarson was not about disposition, but which agency has control. Since these human remains came from Navajo Reservation land the BIA needs to be involved in the cultural affiliation determination.

Mr. Kippen asked what would be the likelihood of getting the BIA's concurrence in time to meet the scheduled reburial date, if the Review Committee agreed to the request. Mr. McKeown stated that the National NAGPRA staff has worked to complete as much as possible the notice and letters required for the repatriation, with only some

last minute details to finalize. Mr. Halvarson stated that the BIA was aware of this repatriation request and the time frame, and added that getting the BIA's concurrence should not enter into the Review Committee's consideration. Mr. McKeown asked for clarification that the culturally unidentifiable human remains were not culturally affiliated with the Indian tribes. Mr. Wiese confirmed that was correct. Mr. McKeown then asked if the wording of Mesa Verde National Park's request could be changed slightly to follow statutory language, from "reasonable inference of shared group identity" to "cultural relationship." Mr. Wiese agreed to the change in wording.

Mr. Kippen recommended that language be included in the Review Committee's recommendation to seek expeditious action to accommodate and meet the scheduled April 20, 2006 reburial. Ms. Worl stated that Mr. Monroe's first motion died due to lack of a second. Mr. Monroe made a motion to recommend repatriation of the culturally unidentifiable human remains, with the specific language to be per the request of Mesa Verde National Park and the repatriating Indian tribes, and to include the expeditious action language recommended by Mr. Kippen. Mr. Bailey recommended including language about the cultural relationship with the 22 Indian tribes. Mr. Kippen seconded the motion. Mr. Steponaitis stated he was in favor of approving the request, but due to lack of evidence to support a finding of cultural relationship he would move to amend the motion to delete the reference to cultural relationship. Mr. Bailey seconded the motion. A vote was taken. In favor of the amendment were three (Mr. Bailey, Mr. Monroe, Mr. Steponaitis) and opposed were two (Mr. Kippen, Ms. Worl). The motion passed to delete the reference to cultural relationship.

Ms. Worl then asked for a vote on the main motion, which would include the disposition of the culturally unidentifiable human remains and associated funerary objects and the expeditious action language. Mr. McKeown asked for clarification of whether the motion would include the language submitted by Mesa Verde National Park of a reasonable inference of a relationship of shared group identity. Ms. Worl stated that it would include that language. Mr. Steponaitis stated that asserting a relationship of shared group identity was inconsistent logically with saying that the human remains were culturally unidentifiable. Mr. Steponaitis moved to amend the motion to include only the disposition issue and the expeditious action language, without commenting on matters of shared group identity or cultural relationship. Mr. Monroe seconded the motion. A vote was taken. In favor of the amendment were three (Mr. Bailey, Mr. Monroe, Mr. Steponaitis) and opposed were two (Mr. Kippen, Ms. Worl). The motion passed to limit the recommendation to the disposition issue and the expeditious action language.

Ms. Worl called for a vote on the original motion to recommend disposition of the culturally unidentifiable human remains and funerary objects and include the expeditious action language. A vote was taken. The motion passed by unanimous vote. The Review Committee approved the request for disposition of the culturally unidentifiable human remains from Colorado.

### **Request for Recommendation Regarding Disposition of Culturally Unidentifiable Human Remains from California**

Mr. Norm McAdams, Alameda County Coroner's Office, stated that on July 7, 2005, the Alameda County Sheriff's Department received two skulls that came from the Department of Anthropology, University of California at Berkeley. The skulls arrived with an anonymous letter that stated that the skulls were removed from an archaeological site in Newark, CA. The skulls were identified by University of Berkeley anthropologist Kent Lightfoot as being of Native American origin. The university police brought the skulls to the Alameda County Sheriff's Office as abandoned human remains. The original package had a newspaper clipping from 1960 indicating the skulls came from an archaeological site that was known to be a Coastanoan settlement. It also contained a letter that stated, "To Whom it May Concern: After numerous attempts to reach and/or receive a reply from your anthropology department, I am forced to simply send these artifacts and the enclosed article explaining their origin to your university department of archaeology. I am sincerely sorry that the village was treated with so little attention and respect at the time. Signed, A Concerned Person."

Mr. McAdams stated that the Alameda County Coroner's Office was looking for the Review Committee's recommendation for disposition of these Native American human remains to the Ohlone Indian Tribe, which is the local group that appears to be the nearest descendents of the Coastanoans.

Mr. McKeown stated that his understanding of the request was that the Alameda County Coroner's Office was asking for disposition pursuant to state law.

Mr. Rob Wood, Native American Heritage Commission, stated that the Native American Heritage Commission's interpretation was that the state law did not apply. First, the Native American human remains predate the enactment of the law. Second, the state law deals with the inadvertent discovery of Native American human remains and not those turned over to universities. In addition, the state law says that the Native American Heritage Commission through its process designates a most likely descendent, which was not done in this case.

Review Committee Discussion: Ms. Mattix stated that she did not see any reference in the requesting letter to most likely descendent or proceeding under state law, and the request seemed to be under Federal NAGPRA and the Review Committee. Mr. McKeown confirmed that NAGPRA applies in this case because the Alameda County Coroner's Office qualifies as a museum as defined under statute, receives Federal funds, and is in possession or control of Native American human remains. Mr. McKeown stated that based on the archaeology and the history of the site there was a relationship of shared group identity with the Ohlone Indian Tribe, a nonfederally recognized group. Mr. McKeown stated that the Review Committee has made recommendations in the past for dispositions to nonfederally recognized groups and may do so at this point if they so wish.

Mr. Wood stated that the Ohlone consist of more than one group, but only one was contacted in this case. The Native American Heritage Commission feels there should be more consultation in this situation. Ms. Treadway stated that there were currently four or five Ohlone groups in that area. Ms. Worl recommended that the Review Committee refer the matter back to the Alameda County Coroner's Office for further consultation and possible reconsideration at a later date.

Mr. Steponaitis asked Ms. Mattix for clarification of an issue related to the Ninth Circuit's decision regarding the Bonnichsen case on the definition of Native American. Under the Court's new standard for what constitutes Native American and therefore triggers NAGPRA, there has to be some sort of a relationship with a present-day Indian tribe. Mr. Steponaitis asked if a relationship with a nonfederally recognized tribe would be sufficient to construe these remains as Native American under the new Court-imposed definition of Native American. Ms. Worl recommended that Ms. Mattix address this legal question when the issue comes back before the Review Committee.

The Review Committee referred the matter back to the Alameda County Coroner's Office, with a request for further consultation with the four Ohlone groups. At a future point, the matter could come back before the Review Committee as a request for disposition, at which point Ms. Mattix would address legal questions. Ms. Treadway stated that the Native American Heritage Commission would be happy to assist the Alameda County Coroner's Office with their consultation efforts. Mr. McKeown stated he would write a letter to the Alameda County Coroner's Office detailing the Review Committee's discussion.

### **Consideration of the Review Committee's Meeting Procedures**

Mr. McKeown stated that he revised the Review Committee's Meeting Procedures to make clear the availability of teleconferencing and other electronic or audio and visual conference calls pursuant to the Review Committee's request at a prior meeting. The meeting procedures were changed in three places. Under section II, the following sentence was added, "Meetings may be conducted in person or, if available, through audio or visual conference call." Under VI.A.5, the following sentence was added, "Scheduled presentations may be made in person or, if available, through audio or visual conference call." Under section C, the following sentence was added, "Open comments may be made in person or, if available, through audio or visual conference call." Mr. Steponaitis made a motion to accept the changes to the Review Committee's Meeting Procedures. Mr. Monroe seconded the motion. Mr. Kippen asked if there was a reason to move this immediately or if the issue could be discussed at the next meeting. Mr. McKeown stated that the additions would formalize the ongoing practice of making comments via teleconferencing, which could occur at the next meeting.

Ms. Worl called for a vote to accept the changes to the Review Committee's Meeting Procedures. A vote was taken. The motion passed by unanimous vote. The Review Committee approved the proposed changes to the Review Committee's Meeting Procedures.

## **FACA Compliance**

Mr. McKeown stated that at his recent FACA training, the General Services Administration representative stated that Review Committee documents (such as the meeting, dispute, and finding procedures) are considered Federal documents because the Review Committee is a Federal Advisory Committee. As such, the documents need to be signed by the DFO. Mr. McKeown stated that the Review Committee had two options to consider; one, the DFO signs documents for the Review Committee, and two, both the DFO and the Chair sign documents for the Review Committee. Currently, only the Review Committee Chair signs documents. Mr. Steponaitis stated that having two signatures would be fine, but he would be happy to just have the DFO's signature if it was logistically easier. Ms. Worl recommended that the Chair sign in addition to the DFO. Mr. Kippen made a motion to require that documents need to be signed both by the Chair and DFO. Mr. Monroe seconded the motion.

Ms. Worl called for a vote on the motion to require that documents need to be signed both by the Chair and DFO. A vote was taken. The motion passed by unanimous vote. The Review Committee approved the proposed change to require that documents (such as the meeting, dispute, and finding procedures) need to be signed both by the Chair and DFO.

## **Discussion of Upcoming Review Committee Meetings**

Mr. McKeown stated that the following issues were currently included on the agenda for the next meeting: one, consideration of the Review Committee's 2005 Report to Congress; two, consideration of amended Dispute Procedures and Finding Procedures; three, FACA training for the Review Committee and others; and four, one party has inquired about a possible dispute.

Mr. Kippen stated that the Review Committee adopted a strong position disagreeing with the characterizations of legislative intent as framed by the Ninth Circuit in the *Bonnichsen* case and in support of the fact that the language ought to be changed to reflect "is or was" in the definition of what is a Native American. Mr. Kippen stressed the importance of this issue and asked to be provided with up-to-date information on how these issues are being handled by the Administration at the next meeting, especially in light of Assistant Secretary Hoffman's view that the *Bonnichsen* case would not have an impact on culturally identifiable issues. Mr. Bailey recommended the issue be discussed in conjunction with the 2005 Report to Congress, and stated he agreed that it was a critical issue. Ms. Worl suggested that the Review Committee consider drafting a letter to the Secretary outlining their position. Ms. Worl stated that this issue would be placed on the agenda for the next meeting.

Mr. Steponaitis stated there was unhappiness on his part and for at least one other Review Committee member following the Albuquerque meeting with the process used for the follow-up letter sent on December 2, 2005. Mr. Steponaitis recommended having a procedural discussion among the Review Committee members about the process for following up on actions taken at Review Committee meetings, in order to prevent future misunderstandings and ensure a smooth process. Ms. Worl agreed and stated she would also like to discuss Review Committee communications. Mr. Monroe stated there was dissatisfaction beyond the two Review Committee members with the process, albeit for very different reasons. Mr. Monroe recommended consideration of what the Review Committee does in terms of possible connections or relationships with parties involved in disputes, as well as how the Review Committee is to be represented in the case of public relations or communications from the Review Committee to the press. Ms. Worl agreed to include these items on the agenda.

Ms. Worl recommended that the Review Committee extend an invitation to the Repatriation Committee of the National Museum of Natural History and the Repatriation Committee of the National Museum of the American Indian to present an overview report of their activities to the Review Committee at the next meeting. Ms. Worl extended an invitation to the Review Committee for a reception to allow Native Alaskans who have repatriated objects to express their appreciation to the Review Committee. Ms. Worl explained that to follow Tlingit protocol she would like to include a traditional welcome of the Review Committee in the opening prayer ceremony of the meeting.

## **Review Committee Membership**

Mr. McKeown stated that a number of members had been unable to attend meetings, which raises a concern that the Review Committee would not have quorum for a meeting and would be unable to conduct business. Mr. McKeown stated that the Review Committee Charter could be amended to allow for the Secretary to appoint alternate members to serve in situations where a seated member could not attend. Mr. McKeown asked for feedback from the Review Committee. Mr. Monroe stated that his response would not be positive. Mr. Monroe stated it would be extraordinarily difficult for someone to serve intermittently as an alternate and acquire a command of the statute, regulations, and administrative procedures and issues. Mr. Steponaitis supported Mr. Monroe's comments and stated that there is a collegiality that builds up among members who serve continually. Mr. Kippen agreed with Mr. Monroe and Mr. Steponaitis and stated that while expertise is necessary there are some things that cannot be learned about the process unless a person is active in the process. Mr. Kippen suggested trying to develop a better way to screen and select nominees and a more realistic representation of the amount of work involved in serving on the Review Committee. Mr. Bailey agreed with the comments of Mr. Monroe, Mr. Steponaitis, and Mr. Kippen. Ms. Worl stated that while Mr. McKeown as DFO has the authority to affect this change, he has now heard the Review Committee's position. Mr. McKeown stated that the Review Committee's position was clear.

Mr. McKeown stated that Mr. Willie Jones agreed to attend the teleconference but was not present. Review Committee members expressed a desire to address the issue of members missing multiple meetings, and specifically the fact that Mr. Jones had now missed three consecutive meetings. Mr. McKeown stated he was prepared to bring this issue to the Secretary. The Review Committee agreed, and Ms. Worl stated the Review Committee was requesting Mr. McKeown take action to move this issue forward.

## **Public Comment**

Ms. Bambi Kraus, National Association of Tribal Historic Preservation Officers, thanked the Review Committee for the opportunity to comment. Ms. Kraus expressed the need for all affected Indian tribes to be informed of any deliberations and actions of the Review Committee, particularly in cases of requests for disposition such as those heard at the teleconference. Ms. Kraus encouraged the Review Committee to try to ensure that every Indian tribe affected by the Review Committee's actions are aware of the issues. Ms. Worl thanked Ms. Kraus for her comments and stated that the Review Committee tries to ensure that as many people as possible are aware of issues that come before the Review Committee, especially those who are directly involved.

Mr. Tony Paredes, National Park Service, requested that the Review Committee clearly indicate in their records why they are recommending consultation with the four Ohlone groups, who are nonfederally recognized groups, in light of the fact that the recommendation could be used as precedent by other nonfederally recognized groups, legitimate or not. Mr. McKeown stated Mr. Wood was no longer present on the teleconference, but he would contact Mr. Wood to ask if there are any federally recognized Coastanoans. Ms. Hutt thanked Mr. Paredes for his work for the NPS and expressed appreciation for his presence at the teleconference as his last official act as an employee of the NPS. Mr. McKeown thanked Mr. Paredes for his work as regional ethnographer, NPS, Southeast Region, and for his long professional career.

Ms. Alice Sadongei, Arizona State Museum, expressed appreciation individually and on behalf of her colleagues, Mr. John McClellan and Mr. John Madsen, for the opportunity to be part of the teleconference.

## **Meeting Adjournment**

Mr. Steponaitis made a motion to adjourn the meeting. With no objections, Ms. Worl adjourned the meeting at 3:47 p.m. e.d.s.t., on Friday, March 3, 2006.

Certified –

/s/ C. Timothy McKeown

Mr. Timothy McKeown,  
Program Officer, National NAGPRA Program  
Designated Federal Officer, Native American Graves Protection  
and Repatriation Review Committee

May 30, 2006

Date

Approved on behalf of the Review Committee –

/s/ Rosita Worl

Ms. Rosita Worl,  
Chair, Native American Graves Protection  
and Repatriation Review Committee

May 30, 2006

Date